

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO.1144 OF 1992.

The Union of India
Representing General Manager,
Central Railways, and
South Eastern Railway : Appellant.
versus
M/s.Shamsundar Hastimal
& Co. Nandgaon, Dist.Nasik. : Respondent.

Mr.A.N.Samant for the appellants.
None for the respondent.

CORAM : D.G.DESHPANDE, J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent. Heard Mr.Samant for the appellants. Nobody is present for the respondents, though served.

2. Mr.Samant, the learned counsel for the appellants, has raised four contentions. Firstly, according to him, the claim was filed by the original claimant against two railways i.e. General Manager, Central Railway, Bombay and General Manager, South Eastern Railway, Calcutta and the tribunal passed an award against both the railways. Therefore, according to Mr.Samant there can be liability only of one railway and not of both the railways.

3. Secondly, he contended that the Railway Receipt was issued by the Railway as "Said to Contain" basis.

4. Thirdly, he contended that the tribunal has awarded interest at the rate of 12% per annum. According to him, it should be 9% per annum in view of the judgment of this Court reported in 2005 (1) Mh. L.J. 165 [Maharashtra State Electricity Board vs. Union of India].

5. Lastly he contended that the claim of the applicant is barred by limitation.

6. Out of the aforesaid four contentions only one i.e. about limitation is material and, therefore, I am considering the same. Issue of limitation was framed by the tribunal on the basis of defence raised by the appellant/railway. The consignment was booked on 11th June 1986. Notice under Section 78B of the Indian Railway Act was given on 6th September 1986 and the suit claim to be filed on 23rd August 1989. The tribunal held that even though the period of limitation was raised it was not pointed out how the claim was barred by limitation. I do not find that this was the proper approach. The suit was admittedly filed three years and two months after the date of delivery. It should have been filed within three years. The claimant could not be claimed extension of period of two months in respect of the notice, because the notice was not given in June 1989. If the notice was given on the last day of limitation, then a party may claim extension of time of of the statutory period. The notice, in this case was given on 6.12.1986. Therefore the suit ought to have been filed within limitation. The suit is clearly

barred by limitation and same should have been dismissed. The judgment of the trial Court is, therefore, illegal and not proper. The appeal is required to be allowed. Mr.Samant for the appellants states that the appellant has deposited the amount. Hence the order :-

:ORDER:

The appeal is allowed.

The impugned judgment and decree is set aside with costs through out.

If the amount awarded by the tribunal is deposited by the appellants, the same should be refunded to the appellant with accrued interest.

[D.G.DESHPANDE]